

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

HARRISON D. WILLIAMSON, JR.,

Petitioner,

vs.

WARDEN, LEBANON CORRECTIONAL  
INSTITUTION,

Respondent.

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Case No. 3:08cv047

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING IN PART AND NOT RULING UPON  
IN PART UNOBTAINED TO REPORT AND RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE JUDGE (DOC. #11) ON  
RESPONDENT'S MOTION TO DISMISS (DOC. #8); MOTION  
GRANTED AS TO GROUNDS FOR RELIEF 3, 4 AND 5, AND NOT  
RULED UPON AS TO GROUNDS 1 AND 2; FURTHER PROCEDURES  
DIRECTED; THIS ENTRY IS NOT A FINAL, APPEALABLE ORDER

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Based upon the reasoning and citations of authority set forth in the Report  
and Recommendations of the United States Magistrate Judge (Doc. #11) on  
Respondent's Motion to Dismiss (Doc. #8), as well as upon a thorough *de novo*  
review of this Court's file and the applicable law, this Court adopts said Report and  
Recommendations in part and does not rule upon same in part.

Specifically, noting that the Petitioner has not objected to that portion of the  
Magistrate Judge's Report and Recommendations as to Grounds for relief 3, 4

and 5, said Report and Recommendations are adopted with reference to said Grounds and the Respondent's Motion to Dismiss is sustained as to same.

This Court does not rule upon the Report and Recommendations, insofar as they deal with Grounds for relief 1 and 2, noting that the Magistrate Judge has recommended a finding that same have not been procedurally defaulted, that the Respondent has respectfully disagreed in its Supplemental Answer, etc. (Doc. #12), and that the Petitioner has submitted documentary evidence, addressed in his "Reply" to the Respondent's Motion to Dismiss, Doc. #10 at pages 17 and 19. Accordingly, this Court prefers that the Magistrate Judge address the legal affect, if any, of the Petitioner's attempts, albeit rebuffed, to appeal the decision of the Second District Court of Appeals to the Supreme Court, insofar as it may impact upon a procedural default analysis. Once a Supplemental Report and Recommendations is filed thereon, the parties have the time set by law to respond.

This Decision and Entry is not a final, appealable Order.

/s/ Walter Herbert Rice

July 16, 2008

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

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